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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR: TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37 (B)

Addendum

Visit by the Special Rapporteur to Venezuela

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Introduction

1. In 1994 the Special Rapporteur on torture of the Commission on Human Rights requested authorization from the Government of Venezuela to visit the country in the context of his mandate, principally in the light of reports received of cases of torture repeatedly occurring in the country. The visit ultimately took place from 7 to 16 June 1996, and enabled the Special Rapporteur to meet his overall objective of gathering first-hand oral and written information from a wide number of persons to enable him to make a better assessment of the situation as regards the use of torture in Venezuela.

2. During his visit the Special Rapporteur met with the President of the Republic, the Ministers of Foreign Affairs, the Interior, Defence, Justice and the Secretariat of the President's Office, the Governor of the Federal District, Attorney-General and other officials of the Attorney-General's Office, President of the Supreme Court of Justice, President and Vice-President of the Judicature Council, Director of Prisons, President and members of the Sub-Commission on Human Rights and Constitutional Guarantees of the Chamber of Deputies, Director-General of the criminal investigations police (PTJ), Director of the Institute of Forensic Medicine, Director-General of the Metropolitan Police (PM), Director-General of Intelligence and Prevention Services (DISIP) and Commander-in-Chief of the National Guard. He also met with torture victims and their families and with representatives of non-governmental organizations, including the following: Comité de Familiares de Víctimas de los Sucesos de Febrero-Marzo 89 (Committee of Relatives of the Victims of the Events of February-March 89) (Cofavic), Comité de Derechos Humanos del Municipio Autónomo Páez (Human Rights Committee of the Autonomous Municipality of Páez), Oficina de Derechos Humanos del Vicariato Apostólico de Puerto Ayacucho (Human Rights Office of the Archdiocese of Puerto Ayacucho), Programa Venezolano de Educación-Acción en Derechos Humanos (Venezuelan Programme of Education and Action in the Field of Human Rights) (Provea), Red de Apoyo por la Justicia y la Paz (Support Network for Justice and Peace) and Vicaría de Derechos Humanos de la Arquidiócesis de Caracas (Human Rights Office of the Archdiocese of Caracas).

3. On 13 June the Special Rapporteur travelled to Maracaibo, where he met with the Minister of the Interior of the State of Zulia and the Prefect of the Municipality of Maracaibo, the Commander-in-Chief of National Guard Regional Command No. 3 and the Zulia State Police Commissioner, and with representatives of various non-governmental organizations, such as the Equipo de Monitores en Derechos Humanos and the Comisión de Justicia y Paz del Secretariado Conjunto de Religiosos y Religiosas de Venezuela (Secorve). The Special Rapporteur also visited several detention centres in Caracas and Maracaibo, where he met with management and a number of inmates.

4. The Special Rapporteur wishes to thank the Government of Venezuela for enabling him to conduct his visit and providing him with the most extensive cooperation, which greatly facilitated his task. He also expresses his appreciation to the Resident Representative of the United Nations Development Programme in Venezuela and her staff for their valuable cooperation in connection with the visit.

I. THE USE OF TORTURE

5. According to information received by the Special Rapporteur, crime prevention and investigation activities by the security forces frequently include the use of torture as a method of obtaining information or as punishment, especially when dealing with low-income sectors of the population, in a society characterized by high crime rates. The security bodies mentioned as being responsible are the criminal investigations police (PTJ), 1/ the Directorate of Intelligence and Prevention Services (DISIP), 2/ the Metropolitan Police (PM) and the State police forces. 3/ The National Guard (GN) 4/ and the army have also been reported as responsible for cases of torture, in particular in border areas with high levels of conflict. The most commonly used methods reported were repeated beatings, with kicks, punches and blunt objects, near suffocation by placing over the head a plastic bag sometimes containing irritants, hanging by the manacled wrists or by the feet, immersion of the head in water, application of electric shocks, cigarette burns, etc. Detainees are also frequently blindfolded during torture to prevent them from identifying the officials responsible.

6. Torture usually takes place at the time of arrest or in the hours or days following the arrest. It should be noted in this connection that police bodies which make arrests are required by law to place at the disposal of the PTJ the people they detain on suspicion of participation in an offence. According to article 10 of the Judicial Police Act, which considers all police bodies to be auxiliaries of the judicial police, the steps they take are of probative value provided they are not nullified during the criminal proceedings.

7. The detainee should be handed over to the PTJ, one of the bodies responsible for preparing criminal proceedings and in charge of conducting the investigation, within the shortest possible time. In accordance with article 75 (H) of the Code of Criminal Procedure, the judicial police are required to place the detainee, within eight days at most of the date of arrest, at the disposal of the Examining Tribunal, which must take a decision concerning detention within 96 hours, except in serious and complex cases requiring a longer time period, which is not to exceed eight days. Non-governmental sources reported that the eight-day time-limit, of which the police make frequent use, before the detainee is placed at the disposal of the judge for verification of his physical condition and consideration of his petitions, is too long and is conducive to the use of torture. In addition, it is frequently not respected. The same sources also indicated that detainees are not always immediately handed over to the PTJ by the other police bodies; officials of the Attorney-General's Office said that the time-limit for doing so was 72 hours.

8. Notwithstanding the prohibition of incommunicado detention set forth in article 60, paragraph 3 of the Constitution, and the obligation for the police under the Constitutional Rights and Guarantees (Protection) Act to grant the detainee access to his family and lawyer, it is apparently not infrequent for detainees to be held incommunicado during the period mentioned above, without contact with relatives, lawyers or the prosecutor, or for the latter to be told that the detainee is not being held, which subsequently proves to be false. It is also not infrequent for visits with families and lawyers to be

held not in private but in the presence of police officers, and for detainees released without charge to be forced by the police to sign a statement attesting that they have not been ill-treated.

9. Non-governmental sources also indicated that confession continues to be an important form of evidence in criminal proceedings, despite the fact that article 248 of the Code of Criminal Procedure stipulates that: "extrajudicial confessions and confessions made to the police authorities shall only be considered as evidence carrying greater or lesser weight according to the character of the person who made the confession, his motives and the circumstances in which he found himself and which he was able to take into account". They reported that this is to a great extent due to the fact that the police in a large part of the country, especially in rural areas, lack the material and human resources to conduct investigations and gather evidence, which makes it all the more important for them to obtain a confession.

10. There are other factors which help perpetuate the use of torture. Non-governmental sources expressed their concern at the role of the forensic physicians, whose reports are decisive for determining the existence of injuries that might be the result of acts of torture. 5/ They drew attention to the irregularity of the methods used in many cases by forensic physicians, who meet the person briefly without conducting a thorough physical examination, subsequently issuing a report stating that the person is in good health, which raises major difficulties when the victim attempts to lodge a complaint. In addition, the police frequently bring the detainee to the forensic clinic several days after the torture has occurred, when any marks have had time to fade or disappear. The representatives of the Institute of Forensic Medicine with whom the Special Rapporteur spoke denied this. They said that in most of the cases transmitted by the Special Rapporteur, concerning which the Government had requested information from the Institute, they had concluded that slight injuries were involved, and that there were generally few cases in which injuries were found, almost invariably slight. In connection with the complaint that the police do not always respect the requirement of having the detainee examined by a forensic physician, they said that the PTJ and the DISIP routinely requested a medical report and that every police station was assigned a prosecutor, who in fact requested the report. As regards the other police forces, the Special Rapporteur was told that it was less customary to request examination by the forensic physician, although this was being done with greater regularity.

11. Non-governmental sources also reported that the fact that the Institute of Forensic Medicine was attached to the PTJ, i.e. a body that could be responsible for the torture, was a factor that detracted from its independence. The Director of the PTJ indicated that it would indeed be preferable for the two bodies to be independent of each other, as the connection was interpreted by public opinion as collusion, and that the Institute also performed a series of duties that had nothing to do with the investigatory functions of the judicial police. The representatives of the Institute of Forensic Medicine said that their connection with the PTJ did not cause them any difficulties, and that they were not pressured in any way, but that the Institute might be linked instead with the university, with which it

already cooperated. The Minister of Justice, for his part, expressed the view that, rather than being part of the PTJ, the Institute of Forensic Medicine should be an independent body attached to the Ministry of Justice.

12. Non-governmental sources also expressed dissatisfaction with the role played in many cases by the prosecutors, whose functions, in accordance with article 83 et seq. of the Code of Criminal Procedure and article 6 of the Organization Act relating to the Attorney-General's Office, include supervising the pre-trial measures taken by the judicial police; investigating arbitrary detentions and promoting steps to end them; encouraging the exercise of public freedoms and supervising the activities of the police forces; ensuring respect for the human and constitutional rights of adults and minors detained in police stations, places of detention, military detention centres, labour colonies, prisons and penitentiaries, reform schools and all other detention and internment establishments; supervising inmates' and internees' conditions of detention, and taking appropriate legal steps to enforce human rights when it is established that they have been or are being impaired or violated. The law also provides for the prosecutors' powers to include access to all of the above-mentioned establishments. They said that the Attorney-General's Office is poorly represented or non-existent in remote areas of the country and that, although some prosecutors are indeed negligent in monitoring the actions of the police, occasionally out of fear of reprisals, the problem is also one of lack of personnel, which was confirmed by the Attorney-General's Office. The same sources also stated that the latter should exercise greater control over the public prosecutors' work. On this point the officials of the Attorney-General's Office told the Special Rapporteur that the Office included a department of inspection and control and that internal administrative proceedings were instituted in cases of negligence.

13. Non-governmental sources also stated that the police forces do not always provide prosecutors with the information they request, which was confirmed by the officials of the Attorney-General's Office. The latter said that the Office could not monitor all the actions of the police bodies, but that they did have access to the daily list of prison admissions, which has to give the detainee's identity and the cause and date of the detention, which enables the Attorney-General's Office to verify the deadline for pre-trial detention. Two types of obstacles, however, were often encountered, the first regarding police officers under investigation, and the second regarding judges. They said that, despite the fact that the prosecutors had a right of access to police premises, such access was sometimes hampered by the police themselves, and they mentioned cases in which prosecutors had been threatened while inspecting reports of irregularities in certain police stations. They also said that judges occasionally failed to carry out the appropriate proceedings out of fear or on account of some sort of prior commitment (political or otherwise), so that the prosecutor's work was held up by delaying tactics. Alternatively, the judges limited prosecutors' access to files or restricted their right to interrogate defendants.

14. Torture victims are frequently reluctant to lodge a complaint, either because they have been threatened with subsequent reprisals, because they mistrust the judicial system and doubt whether their complaint will lead to the punishment of those responsible, given the deficiencies in the functioning

of the judicial system mentioned below, or simply because they cannot afford the legal costs involved, both the official kind and those due to widespread corruption. The Special Rapporteur's impression was that more complaints are being lodged nowadays than a few years ago, thanks to efforts by human rights organizations. Generally speaking, however, and with the exception of a few specific cases, lawyers do not appear to make an essential contribution to bringing and moving the cases of tortured victims before the courts. On the other hand, most torture victims do not have the assistance of a lawyer in the hours or days following their arrest.

15. A study by NGOs on the World Bank and the judicial reform in Venezuela reports the following about people's access to lawyers' services:

> "In view of existing requirements regarding the right procedures and the registration of correctly drafted documents, combined with the prevailing administrative chaos, any legal matter of any importance requires the assistance of a lawyer. The vast majority of the low-income population, however, cannot afford to hire a lawyer, which means that they are in effect denied access to the legal system. (...) Venezuelan law does provide for the possibility of legal aid for persons who cannot afford to hire a lawyer. The legal aid system, however, is fraught with problems." One of these is that "there are not enough legal aid lawyers to cope with the heavy load of cases processed by the judicial system. For example, in 1993, 157 legal aid lawyers shared a total of 45,702 cases between them (...). The quota of cases per lawyer later rose to 348 in 1995". 6/

16. Despite the foregoing there are cases in which complaints are lodged. It is even quite common for victims to go to the media, which regularly publish information on incidents of torture, especially when the events in question have affected an entire group. The non-governmental organization Red de Apoyo por la Justicia y la Paz counted a total of 50 complaints of torture or cruel, inhuman or degrading treatment in the press in January 1996, 61 in February, 58 in March, 59 in April and 57 in May. Although the Special Rapporteur cannot say whether the information published in the press is accurate, he does believe that repeated complaints of this type are an indication of some truth. 7/

17. The paragraphs below contain examples of cases of torture, most of which allegedly took place in 1995 and 1996, which came to the Special Rapporteur's attention either through direct testimony from the victims or through information from reliable non-governmental organizations, such as the Sub-Commission on Human Rights and Constitutional Guarantees of the Chamber of Deputies.

18. Fifteen-year-old David Rodríguez, 22-year-old José Torres and 30-year-old Luis Urbano were arrested on 26 March 1995 by the Metropolitan Police in Nueva Tacagua, Caracas. David Rodríguez allegedly had his wrists bound and a bag containing tear-gas placed over his head, was also beaten with a blunt object and received cigarette burns on his ankles. José Torres allegedly was severely beaten with blunt objects while handcuffed and had his head banged against the wall repeatedly. Luis Urbano was said to have had a bag containing tear-gas placed over his head and to have been beaten.

19. Twenty-four-year-old Julio Rafael Tovar, 18-year-old Andrés Blanco, 20-year-old Carlos Ramón Iruiz Apoto and 15-year-old Angel Jaidar Iruiz were arrested on 14 January 1995 at Caicara del Orinoco, State of Bolívar, by National Guard Detachment No. 87. In front of their relatives and members of the community they were allegedly subjected to various forms of torture, such as having their heads submerged in animal drinking troughs and being beaten with blunt objects; they were also allegedly hung in the air by their feet, after which their heads were submerged in barrels of water and they were given electric shocks. A prosecutor allegedly witnessed these events.

20. Clodomiro Emilio Rivas López was arrested on 16 May 1996 at the Turmero shanty town, State of Aragua, by the PTJ in the course of an investigation into an armed bank robbery. The officers allegedly took him to PTJ headquarters in Caracas, where he was beaten on the head with a bulletproof vest until he lost consciousness; he was also allegedly rolled in a mat whereupon several police officers jumped on him and beat him with a broomstick. He was then moved to the PTJ station in Cumaná, where he was again reportedly beaten and hung up for several hours. His lawyer lodged a complaint with prosecutor No. 57. Francisco García Boada was arrested on 19 May 1996 at Cumaná, in connection with the same event. He was brought to Sucre State Police headquarters and allegedly severely beaten. He was then moved to the PTJ, where he was again allegedly beaten and hung up for 14 hours. In neither case was a medical examination carried out, despite the fact that the prosecutor ordered one.

21. Andrés Eloy Blanco was arrested on 5 October 1995 at his workplace, in Colinas de Bello Monte, Caracas, by the PTJ in the course of a robbery investigation. He was taken to Robbery Division Brigade C, where he was allegedly subjected to several forms of torture, including beatings and near suffocation by placing a plastic bag over his head. Some of the blows were dealt while he was hung up by his wrists. He was also forced to sign a statement with a gun at his head. He was released without charge 12 days later. His work colleagues, arrested under the same circumstances, were allegedly subjected to similar torture: Antonio David Sanjuanero, held incommunicado for five days, Eddy Marcel González, who sustained a broken collarbone as a result of being hung up and José Gregorio Guerrero. A complaint was lodged with prosecutor No. 54.

22. José Gregorio Azuaje was arrested in Caracas on 23 November 1995, a few days after reporting that he had been the victim of an armed robbery while transporting the payroll of the company for which he worked, by the DISIP on charges of collusion with the robbers. He was taken to DISIP headquarters in Los Chaguaramos and was allegedly beaten, had earth placed in his eyes and plastic bags over his head and was given electric shocks on his legs and ears. He was also allegedly hung from the roof by his hands, and, while in this position, beaten and given electric shocks. He was subsequently released, after being warned not to tell of his treatment.

23. Cases of torture and ill-treatment are also alleged to occur during control operations by the security bodies during protests or social unrest, which were particularly intense at the time of the two attempted coups d'état in February and November 1992. Arrests followed by torture during

demonstrations and other forms of protests and in connection with land ownership reportedly continue to occur, as in the following cases.

24. On 30 May 1995 a group of 24 students from the Instituto Universitario Barlovento in Higuerote, State of Miranda, were apparently conducting internal demonstrations to protest against the poor performance of some teachers. The Miranda State Police allegedly arrived and severely beat the students, mainly using peinillas (truncheons), released tear-gas bombs on the premises and took the students to police headquarters.

25. Baudilio Contreras was allegedly tortured on 16 November 1995, when a group of peasants set up camp in a place called "El Pollire", Santa Bárbara, State of Barinas, claiming ownership of some land on behalf of the National Agrarian Institute. The National Guard reportedly arrived on the scene to remove the peasants. When Baudilio Contreras attempted to speak for the group to explain the reasons for its action, the guards allegedly beat him severely; they then tied him to a tree, released tear-gas bombs next to him and introduced tear-gas residue into his nostrils, mouth and eyes. Lastly, they tied him to the tail of a horse, which dragged him some 800 metres. He was then taken to headquarters and from there to the PTJ, which allegedly refused to receive him when they saw the poor state he was in. He was visited by the prosecutor and forensic physician at his relatives' insistence. The physician, however, did not examine him.

26. In several areas in the border States, raids by Colombian guerrilla forces into Venezuelan territory, together with smuggling and the drug traffic, have led on the one hand to an increase in the forces of order detailed to these areas especially the army, and on the other to increased insecurity among the inhabitants. As part of their operations, the forces of order, organized into what are known as "theatres of operations" in some areas, allegedly commit abuses, including torture, against the mostly peasant civilian population on suspicion of collaboration with the guerrilla forces, occasionally taking advantage of the suspension of constitutional guarantees. Below are a few examples of these abuses.

27. Mario Landino and his 18-year-old son Henry Landino, members of the Barí indigenous community, were arrested in March 1993 in the town of El Cruce, municipality of Catatumbo, State of Zulia, by a military patrol, one day before a group of approximately 60 soldiers raided the neighbouring community, "5 de julio", where they allegedly searched homes and interrogated and threatened the inhabitants. They were allegedly held incommunicado with approximately 30 other individuals, in a place which they were unable to identify, and subjected to various forms of torture, such as near suffocation by placing over their heads a plastic bag containing ammonia or tying ropes round their necks, beatings, burning with caustic substances and death threats. They were also given injections of a substance producing a burning sensation throughout the body. In these circumstances they were allegedly forced to sign confessions of collaboration with the Colombian guerrilla movement. On 4 April 1994 they were taken to the Santa Bárbara police station, after being threatened with electric shocks if they said that they had been tortured by the military. They remained in Santa Bárbara for three days with no water or food. A PTJ doctor allegedly examined them, but did not certify their injuries in his report. They were then moved to

Sabaneta prison in Maracaibo, on charges of guerrilla activities. The report of the prison doctor who examined them allegedly confirmed that Mario Landino had several broken ribs, burns, and injuries to his eyes. Mario Landino remained in prison until March 1994, when he was released on bail, while at the close of this report Henry was still in prison awaiting trial.

28. On 26 February 1995 members of the Colombian guerrilla group Ejército de Liberación Nacional (ELN) (National Liberation Army) crossed the border into Venezuela and attacked the Cararabo naval base in the State of Apure, killing eight members of the navy. In the days following the attack the navy arrested 24 local residents on charges of involvement in the attack; all except one, however, were released without charge in the course of the following two weeks. Many of those arrested were allegedly subjected to torture or ill-treatment such as beatings with peinillas, simulated executions, near suffocation by placing plastic bags over their heads, burns and death threats. Among them were two minors, 14 and 17 years of age, who allegedly received broken legs and other injuries, and a pregnant woman who reportedly lost her baby as a result of her treatment. According to witnesses, one of those arrested, Juan Vicente Palmero, died as a result of his treatment, but his body has not been found. The Director of the Human Rights Department of the Office of the Attorney-General of the Republic travelled to Puerto Ayacucho, State of Amazonas, on 10 March 1995 to meet with the individuals concerned, and later told the press that they bore marks of torture. Several days later, the Ministry of Defence ordered an investigation. Investigations by the military examining magistrate in Puerto Ayacucho resulted in the detention of four members of the navy in connection with the disappearance of Juan Vicente Palmero. At the time this report was drafted, the case was in the hands of the Standing Military Court in Maracay. The Minister of Defence and the President of the Republic assured the Special Rapporteur that this case would not go unpunished.

29. Members of the theatre of operations made up of the GN, PTJ, Military Intelligence Directorate (DIM) and DISIP arrested a group of people in the autonomous municipality of Páez, State of Apure, in the month of July 1995 in connection with investigations into the alleged kidnapping of the town's mayor. The following individuals were allegedly tortured: José Hernández, arrested at La Capilla shanty town, who was held at PTJ headquarters for five days; Miguel Angel Guerrero, also arrested in La Capilla; Francisco Lara, arrested in Montillero and allegedly held at PTJ headquarters; Martín Alvarez, arrested in Santa Rosa, Juan Gómez, arrested in Montillero, held at the DISIP in Guasdualito; Rodolfo Alvarez, arrested in Los Arenales; Antonio Domínguez, arrested in La Capilla; Justo Pereira, arrested in Los Arenales; José Ballona, arrested in La Capilla; Alvaro Ballona, arrested in La Capilla; Guillermo López and his wife, arrested in Las Canoas and held at PTJ headquarters; Luis Argüello, arrested in La Victoria; Isabelino Bustamante, arrested in La Victoria and Marcos Sánchez, arrested in Santa Rita. Their treatment allegedly included beatings with blunt objects, near suffocation by placing plastic bags over their heads, blows to the ears with the palms of the hands, sleep deprivation and death threats; some were hung by their wrists. All complained that they were coerced into signing statements to the effect that they had not been ill-treated. They also reportedly received no medical treatment, and, in those cases where they were seen by a forensic physician, the physician certified that the individuals were in perfect

physical condition. The individuals in question, however, were examined by the medical staff of the non-governmental organization Red de Apoyo, who found physical after-effects consistent with the events reported in the complaints.

30. Aníbal Roberto Ruiz Calderón was arrested by theatre of operations No. 1 personnel in November 1995 in La Esperanza shanty town, between Santa Rita sector and las Monas, State of Apure, on suspicion of contact with the Colombian guerrilla fighters. While in detention he was allegedly stripped, blindfolded and gagged, bound hand and foot and tied to a tree. In this position he was allegedly beaten unconscious.

31. All these cases were transmitted to the Government by the Special Rapporteur on various occasions. On 30 October 1996 the Rapporteur transmitted a total of 33 cases, some of which were collective cases. 8/

32. The government authorities with whom the Special Rapporteur met were unanimous in condemning the use of torture. The Minister for Foreign Affairs, for example, said that although the Government did not condone abuses, they might take place at the lower levels of society, partly due to the low cultural level of junior police officers. He also said that crime was a serious social problem that was partly fostered by the prevailing impunity.

33. From the legislative side, the members of the Sub-Commission on Human Rights and Constitutional Guarantees of the Chamber of Deputies indicated that many of the complaints they received were related to abuses by the police, including physical ill-treatment, which occurred on a daily basis, and that, although it was not government policy to inflict ill-treatment, there was negligence on the latter's part and covering up by the police. They said that during 1995 they had received complaints of 67 cases of ill-treatment alleging responsibility by the Metropolitan Police, 40 attributable to the National Guard, 24 to the DISIP and 24 to the PTJ. In addition, many more cases had been dealt with by the state legislative assemblies. Concerning the role of the prosecutors, they said that there should be a greater turnover of prosecutors assigned to specific police or prison centres, since these assignments often led to situations of collusion.

34. The Director of the PTJ said that its staff was insufficient for the large quantity of events of all types it had to investigate, and that there were times when the officers took the easiest way of speeding up the investigation. He did say, however, that although there were abuses, these were not institution policy and were not supported by the PTJ management.

35. The Metropolitan Police authorities said that abuses by the police have been reported more regularly in recent years and that the police encouraged citizens to lodge complaints. Police officers also know that complaints are investigated and that there is a risk of punishment, which has brought down the number of incidents of abuse.

36. The Commander-in-Chief of the National Guard said that expulsions by the Guard in cases of land invasion always took place at the request of the Governor or competent judicial authority, and always strictly within the bounds of the law. In addition, the National Guard always requested that a prosecutor should be present, precisely in order to guarantee legality.

He also said that the internal supervision and control system based on the Guard's hierarchy was in itself a guarantee that abuses would not be committed and that a member who committed an offence would never be protected.

37. The Chief of the Zulia State Police said that cases where citizens had received serious injuries at the hands of the Zulia police had occurred, but that they were being investigated. He also said that much of the problem was due to the lack of proper training of police staff.

II. PROTECTION OF THE RIGHT TO AN EFFECTIVE REMEDY FOR THE VICTIMS OF ACTS OF TORTURE

A. Disciplinary procedures

38. All the police bodies, including the PTJ, the Metropolitan Police, the DISIP and the National Guard, have internal disciplinary procedures through which, these bodies' authorities assured the Special Rapporteur, those responsible for acts of torture are appropriately punished. The PTJ has a Directorate-General of Inspection which monitors the various services, and within it, a discipline division. The internal disciplinary procedure can be initiated ex officio or on application. If the internal investigation reveals that an offence has been committed, the case is transferred to a criminal court. Also according to the Disciplinary Rules, the Director can suspend a staff member from his post and salary for 30 days while the individual's responsibility is being determined. Under the same rules, ill-treatment of detainees is considered to be a serious offence, and it is for the Director to decide on appropriate punishment. The Special Rapporteur was also told that 103 disciplinary inquiries for physical and psychological ill-treatment of detainees had been opened between March 1994 and April 1996.

39. As regards the Metropolitan Police, article 64 of its new General Rules of Procedure 9/ stipulates that "no police officer shall inflict, instigate or tolerate any act of torture or cruel, inhuman or degrading treatment, or use as justification for such acts an order by a superior or special circumstances such as threat of war, state of emergency, internal disturbance or conflict, suspension or restriction of constitutional guarantees, threat to national security, internal political instability or any other public emergency". The same article stipulates that "torture is understood as being any intentionally-committed act inflicting physical or mental ill-treatment, pain or suffering on an individual for purposes of criminal investigation, as a means of intimidation or personal punishment, as a preventive measure or for any other reason". "Torture shall also be interpreted as the use of methods tending to suppress an individual's personality or diminish his physical or mental capacity, even without causing distress or physical pain." Article 66, for its part, stipulates that when police officers have reasons to believe that any of the above-mentioned behaviour has occurred or is about to occur they are bound to inform their superiors and, if necessary, any appropriate authority or body vested with reviewing or remedial power, so that the violation may be redressed. These provisions are clearly inspired by the United Nations Code of Conduct for Law Enforcement Officials. 10/

40. The Director-General of the Metropolitan Police said that the Metropolitan Police also have an internal disciplinary procedure that may

be activated in cases of injury, which is considered to be a most serious offence, in addition to the criminal proceedings which the prosecutor may initiate if there are good reasons to believe an offence has been committed. The procedure may be initiated either on a personal complaint or ex officio. The Director also said that instructions concerning the treatment of detainees are issued regularly in order to establish controls and that training courses have been given in matters relating to human rights. The new rules of procedure also establish the post of Commissioner for Human Rights and the Police, one of whose functions, according to rule 92 (1), is to receive complaints by individuals regarding actions by the police that constitute human rights violations or corrupt practices, and to bring those complaints before the authorities of the Metropolitan Police, for the appropriate remedial measures and disciplinary sanctions to be applied. If the investigation reveals that an offence has been committed, the Commissioner refers the proceedings to the Attorney-General.

41. Although the Special Rapporteur asked each of the police forces for detailed statistical information to obtain an idea of how many officials had been punished for ill-treatment of detainees and what types of sanction had been applied, the information was either not supplied or supplied in an incomplete form.

42. The President of the Supreme Court said that a judge who receives a complaint against a police body might easily be intimidated by the esprit de corps of the police and fail to process the complaint. It might help judges to feel more secure if they felt that the police was genuinely interested in purging itself. Judges often do not have that feeling, however.

B. Ordinary criminal legislation

43. Article 60, paragraph 3 of the Constitution stipulates: "No one may be held incommunicado or subjected to torture or to other proceedings which cause physical or mental suffering. Any physical or moral attack inflicted on a person subjected to restriction of his liberty shall be punishable". Article 182 of the Penal Code stipulates that: "any suffering, offences against human dignity, harassment, torture or physical or moral attacks inflicted on a detained person, by his jailers or warders or by anyone who ordered such acts, in violation of the individual rights recognized in article 60, paragraph 3 of the Constitution, shall be liable to a prison term of three to six years".

44. The Special Rapporteur was informed that article 182 was being interpreted in such a way as to restrict its application to situations arising in prisons. In all other cases torture or ill-treatment is considered by the judiciary to come under the offence of injury (slight or serious), which in the Special Rapporteur's opinion is completely inappropriate. In the first place, the existence of physical injury is an adequate test because torture is an offence that must be prosecuted in itself, independently of the physical harm caused to the victim. There are, for example, methods of torture that leave no physical after-effects but are no less effective for the torturer's purposes. When the acts are characterized as "slight injuries", moreover, the offence carries a very short statute of limitation, or period of prescription, which, given the deficiencies in the administration of justice,

in particular the problem of judicial delays, easily leads to situations in which, as soon as the proceedings are starting to make headway, the judge orders prescription of the penal action.

45. When the Special Rapporteur raised this problem, the President of the Supreme Court of Justice and the Minister of Justice said that they were in favour of the offence of torture being appropriately criminalized, pursuant to the relevant provision of the Constitution. The Special Rapporteur believes that the legislation in this area should be aligned on international instruments, in particular the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Venezuela is a party. 11/

C. Trial rules and practice

46. Pursuant to article 6 of the Attorney-General's Office Organization Act, the Office is responsible for initiating the appropriate proceedings to enforce the civil, criminal, administrative or disciplinary responsibility incurred by public officials in exercise of their duties. In addition, under article 374 of the Code of Criminal Procedure, the prosecutors are bound to report to the competent tribunals any offences committed in their jurisdiction by public officials in the performance of their duties, or for reasons connected with their office, and any individual may bring charges against them. Article 374 also states that in such cases, and provided that the official has committed the act in question in the performance of his duties, any judge hearing the case would be asked to conduct an información de nudo hecho (preliminary examination) procedure.

47. Pursuant to these provisions, when a prosecutor learns of an alleged case of torture, he is bound to conduct preliminary investigations with the police force concerned and to order a medical examination to verify the nature of the injuries. Once that verification has been completed, the next step is to ask the judge to initiate the nudo hecho procedure. According to a circular of the Attorney-General's Office, 12/ this special procedure initiates a series of legal steps, through a court, which are indispensable as a basis for bringing charges against a public official. These steps are as follows:

(a) Determining whether those alleged to be responsible for an offence are indeed public officials, through certification issued by the competent authority regarding the relevant appointment, acceptance of post and oath of office;

(b) Establishing, in the event, whether the offence was committed by the official in the exercise of his duties, through appropriate certification issued by the competent authority;

(c) Establishing whether the person allegedly responsible for the offence being investigated has continued, after commission of the offence, to exercise the same public office he held at the time the alleged offence was committed.

48. If these three conditions are found to apply, the prosecutor must lodge the appropriate complaint before the competent criminal court, for the latter to initiate the pre-trial investigation. According to the report by the Attorney-General of the Republic, there were 50 requests for información de nudo hecho investigations for alleged torture throughout the country in 1995. 13/ The report, however, does not contain information on their outcome.

49. The 1994 report of the Attorney-General's Office stated that the Office was working to streamline its processing of cases in order to decrease as far as possible the frequent lengthy delays, which in many cases result in impunity for those officials who really have committed a publicly actionable offence in the performance of their duties. The report also states that the Attorney-General's Office informed the Ministers of the Interior and Justice, as well as the State Governors, of its concern at the continual delays of the police forces in supplying information requested by the courts. 14/

50. The officials of the Attorney-General's Office, at a meeting with the Special Rapporteur, said that they had issued instructions for streamlining the nudo hecho procedure to ensure that it would not remain with the court for longer than 10 working days, according to an internal circular issued by the Office. After expiry of that time period, the prosecutor was to withdraw the request and decide whether or not to institute formal proceedings. The Attorney-General's Office in Caracas usually receives a copy of the nudo hecho applications filed anywhere in the country, which enables it to monitor the prosecutors' work. In addition, prosecutors in areas far from the capital who lack the means to institute proceedings can always turn to the Attorney-General's Office to ask for support on the basis of the principle of unity in force throughout the Office. They admitted that it was difficult to obtain the information required for the nudo hecho procedure from the police. If repeated complaints were received in respect of a specific place of detention, the Attorney-General could order a special surprise operation; six such operations had been conducted in Caracas in recent months, revealing that detainees were in fact being harassed, as a result of which the appropriate judicial proceedings had been initiated.

51. Non-governmental sources criticized the functioning and very existence of the nudo hecho procedure and said that, if it were eliminated, the time it currently took could be used instead for the actual proceedings. They also said that a nudo hecho procedure took on average 14 months to be completed. The Minister of Justice agreed regarding its limited usefulness. The Special Rapporteur, for his part, did not receive sufficient information to determine whether the 10-day time-limit for processing this procedure was in general being respected.

52. A further point is that the PTJ is in charge of carrying out all criminal investigations into complaints of torture and other human rights violations committed, not only by police forces, but also by its own personnel. In the opinion of some of the people with whom the Special Rapporteur spoke, this limits the impartiality and effectiveness of such investigations and helps to create an atmosphere of impunity for the

perpetrators. The Director of the PTJ said, however, that although the PTJ's conduct in this respect had been above reproach, he had no objection to this type of investigation being conducted by another body.

53. The different points made in the preceding pages, in particular the negligence of prosecutors and members of the Institute of Forensic Medicine, the difficulties they encounter, the lack of transparency of the various police forces alleged to be implicated, the obstacles in the way of exercising the right to a defence, etc. all combine when it comes to establishing responsibility for the commission of acts of torture. They are compounded by the shortcomings in the functioning of judicial bodies, concerning which the Special Rapporteur received repeated criticism from both non-governmental and academic sources, government authorities and representatives of the judiciary.

54. The Special Rapporteur did not hear of a single case where the perpetrators of acts of torture had been sentenced for such crime, which is surprising in view of the significant number of complaints and the fact that the authorities themselves recognize that cases do occur. During his visit, he received replies from the Attorney-General's Office regarding 18 cases, including seven collective cases, which the Special Rapporteur had transmitted to the Government at various times. 15/ In five of these cases, the Attorney-General's Office said that it had received no complaint, or that the alleged victim had not appeared to confirm the facts of the complaint. In two cases the judge had declared the inquiry terminated by prescription of the criminal proceedings, after the injuries concerned had been described as slight. In one case, where the person had been found dead and showed signs of torture, three officials of the Metropolitan Police had been sentenced in 1994 to seven years and six months for the offence of homicide, after which they had been granted a suspended sentence on 27 June 1995. Two cases had been assigned to the military jurisdiction. One of these was in the pre-trial stage, 16/ while the other, in which the victim had died, had been investigated by a military court, after which the President of the Republic had decided, in application of article 224 of the Code of Military Justice, to file the case. 17/ In eight cases, the Attorney-General's Office reported that it had either requested a nudo hecho inquiry, or had brought judicial charges against police officials for inflicting injuries, and that the judicial inquiry had not yet been completed. The facts, however, dated back respectively to April 1992, May 1993, January 1992, October 1991 (three cases), February 1992 and October 1995 (the most recent). In one of the cases, the Attorney-General's Office reported that a nudo hecho procedure had been requested in December 1991, and the outcome had to be awaited before charges could be brought.

55. The above situation raises the issue of the way the judicial bodies operate, a subject which the Special Rapporteur found to be of great concern to the persons he interviewed, and the general lines of which may be summarized in the following comment by Professor Julio César Fernández Toro in a United Nations Development Programme (UNDP) publication:

> "Despite the favourable treatment given in the Constitution and in a large part of Venezuelan legislation to the consecration and development of personal rights, the latter cannot effectively be exercised. There is a wide gap as a result between formal law and the exercise of rights

in practice. Owing to the daily arbitrary infringements of personal rights by State bodies, the impossibility of defending those rights and the impunity of the perpetrators, legal insecurity is nowadays a fact. (...) In its jurisdictional functions, the State has proved ineffective and inefficient in supervising the lawfulness of official acts, in protecting individuals against arbitrary official decisions, in settling conflicts between persons or between social groups and in making good the damage caused. This failure is due to the precarious independence and general weakness of the Judiciary. As a result of the insufficiency of financial resources made available to the judicial system, of disregard for the Judicial Careers Act and of the impact of party political, bureaucratic, economic or group interests on the administration of justice, this service is unreliable and is perceived as such by the public (...). Legal insecurity clearly affects the lower income strata more severely, so that it is considered that the problem is related to the socio-economic structure of society (...). Personal rights are violated despite the provision of adequate guarantees in the legal system. This unconstitutional or illegal attitude is due to a culture in which the rule of law is not a fundamental value. The rule of law has to be established as a social value, by changing the mechanisms whereby such values are reproduced and by altering the process of personal internalization." 18/

56. The Minister of Justice, the Attorney-General and the Judicature Council authorities 19/ all criticized the shortcomings of the present system of justice, referring extensively to some of these, such as corruption and procedural delays. They expressed great hopes that these and other problems might be alleviated with the reform which is to be introduced with the new Code of Criminal Procedure, to which certain sectors of the judiciary are however opposed. Under this reform, the inquisitorial system would be replaced by an accusatorial system, in which the Attorney-General will have sole control of criminal proceedings. The Minister of Justice said that some of the judges in the country were extremely corrupt, but that the Judicature Council did not take any disciplinary measures in that respect. He pointed out that in view of the characteristics of current examination proceedings, which were practically conducted in secrecy, with the magistrates too far removed from the parties and the latter's access to files unduly restricted, corruption occurred all too easily. Furthermore, proceedings were held almost entirely in writing, which added to their excessive duration. Some of the shortcomings could be alleviated by the introduction of an oral phase, as provided for in the draft new code.

57. The Judicature Council authorities said that the judicial system had broken down and that there was a marked shortage of jurisdictional bodies compared with the crime and population indices (a court receives on average between 160 and 200 cases per month). The courts were also experiencing serious shortages in terms of human and technical resources. They said that procedural delays were not due only to the judges, but also to the public prosecutors in the part they played within the legal system, and to the judicial police authorities. They added that any substantial improvement in the administration of justice would depend on introducing a radical structural change and that reform would need to be comprehensive. This required a substantial increase in the budget, which was currently extremely low.

III. THE SITUATION IN PRISONS

58. It is not part of the Special Rapporteur's mandate to give a detailed analysis of conditions of detention. In the case of Venezuela in particular, moreover, he did not consider the prison situation a priority owing to the fact that, only a few weeks before he had arrived in the country, there had been a visit by the Inter-American Commission on Human Rights, which had concentrated specifically on the question of prisons. Nevertheless, the Special Rapporteur took advantage of his stay in Venezuela to visit three establishments, as he usually does in the course of his country visits with several objectives: to interview some persons deprived of liberty and the authorities of the establishments, in order to check for signs of practices there which might be deemed as torture or cruel, inhuman or degrading treatment, and to ask detainees about their experience in that respect before arriving at the establishment.

59. Bearing those objectives in mind, the Special Rapporteur visited the following establishments: Casa de Reeducación y Trabajo Artesanal El Paraíso (El Paraíso Re-education and Handicraft Centre) (La Planta), the Juvenile Division of the Judicial Police (Coche), both in Caracas, and the National Prison of Maracaibo (Sabaneta). The Special Rapporteur also received information regarding the situation in prisons from governmental and non-governmental sources.

60. Among the aspects related to his mandate, the Special Rapporteur considered the most problematic to be the overcrowding which prevails in the majority of the country's prison establishments. According to data provided by the Attorney-General's Office, 20/ at the end of 1995, La Planta had 1,768 inmates, for a capacity of 400; the Internado Judicial of San Juan de Los Morros in Guárico had 1,066 inmates for a capacity of 200; the General Penitentiary of Venezuela in Guárico had 2,185 inmates for a capacity of 750; the National Prison of Maracaibo had 2,314 inmates for a capacity of 800; the Internado Judicial of Mérida had 579 inmates for a capacity of 150; and the National Prison of Ciudad Bolívar had 1,190 inmates for a capacity of 400. According to other sources, the Internado Judicial Capital El Rodeo, State of Miranda, had a prison population of 1,126 for a capacity of 600 in October 1996, while the Retén e Internado Judicial Las Flores de Catia in Caracas had a total of 1,758 inmates for a capacity of 750.

61. In the course of his visits to the establishments of Sabaneta and La Planta, the Special Rapporteur had occasion to observe how the overcrowding is experienced on a day-to-day basis in premises which in addition suffer from serious deficiencies. The director of La Planta clearly said that the establishment's problems arose from the situation of overcrowding. He explained that the establishment currently held 33 detainees under the Law of Vagrants and Crooks (Ley de Vagos y Maleantes) 21/ and 29 juveniles considered to be particularly dangerous, and that prisoners were not classified in any particular way. Some 30 inmates were in punishment cells. The Special Rapporteur visited one of these cells, which contained three persons, two of whom showed symptoms of mental confusion and loss of time sense. The cell, which was in a disastrous state hygienically, was deprived of any furnishings, including beds or mattresses, and lacked any natural light or ventilation. The Special Rapporteur also visited some of the rooms where the prisoners

slept and where some 100 of them remained cooped up from evening to morning within an area of about 25 square metres, the ceiling space being used to suspend hammocks.

62. The Special Rapporteur also visited the women's quarters at La Planta and Sabaneta and spoke to some of the inmates, who reported that there was no physical ill-treatment in those establishments. Some of them, nevertheless, said they had been tortured by the police in the hours or days following their arrest. In the women's section of the Sabaneta prison, the Special Rapporteur was pleasantly surprised by the prevailing material conditions, which contrasted markedly with those commonly found in the male quarters. According to information received, the women's quarters were not overcrowded and, thanks to a programme financed by the European Union, major improvements were being introduced in the areas of health, education and activity workshops. With regard to the male quarters of both establishments, non-governmental sources reported that inmates were often physically ill-treated on the occasion of the inspections regularly carried out by the National Guard.

63. The authorities whom the Special Rapporteur interviewed, and in particular the Minister of Justice and the Director of Prisons, were very concerned by the prison situation. It is also a concern of the Attorney-General, whose last report contains the following comments:

> "The human rights of inmates are violated day after day, without the authorities responsible for solving the problem having come up with any effective results. In our prisons, approximately 70 per cent of inmates are persons still awaiting trial, while only 25 to 30 per cent have been convicted. This situation has led to congestion in the prisons, which do not possess the necessary infrastructure to house such a disproportionate number of detainees, which in turn makes any remedial and social resettlement work impossible (...). There is no doubt, therefore, that the delays in passing judgement incurred by some courts have contributed to the breakdown which has occurred in the prison system". 22/

64. Overcrowding is also a problem for the detention premises of the PTJ, which the Special Rapporteur observed at first hand at La Planta. In this connection, the Director of the PTJ said that despite the fact that the latter should not hold people on its premises after the first eight days of detention, there were cases where detainees under detention orders had remained in the hands of the PTJ for four or five months, simply because there was no room for them in the prisons. As a result, he said, PTJ officials had in effect become jailers, a job for which they were not prepared and which gave rise to corrupt practices.

65. Other governmental and non-governmental sources also pointed to the slowness of procedures as a significant cause of prison overcrowding. According to the NGO study on the World Bank and judicial reform in Venezuela, "the number of cases pending before the courts of first instance quintupled between 1986 and 1991, as a result of which the average time for criminal cases to be processed rose to 1,136 working days, 10.4 times more than legally required under the Code of Criminal Procedure. Since, generally speaking, most low-income defendants are unable to put up bail, all those accused of

some offence tend to wait in prison until their innocence or guilt has been established (...). Many of the accused spend more time in prison waiting for their case to come to trial than the maximum sentence they would have received for the offence of which they are accused". 23/ According to the report by the Attorney-General's Office, out of a total of 22,652 inmates at the end of 1995, only 7,130 had actually been convicted.

66. The President of the Supreme Court of Justice said that there was a lack of coordination between the administrative, judicial and prison services and a shifting of blame with regard to the cause of procedural delays; for the administrators, the judges were to blame because they took too long to pass judgement; the judges on the other hand argued that they could not judge cases because the detainees were not brought before them. Meanwhile the Attorney-General's Office said that it was hampered in its duties by the Ministry of Justice, which did not heed suggestions regarding how to deal with overcrowding in the prisons. Every day they could see how the Ministry ignored their proposals regarding the transfer of detainees to the courts when called to appear by the jurisdictional authorities, on the grounds that there were no means of transport or no staff available. The upshot, as the Office pointed out, was that the general overcrowding could be considered to be due largely to the inefficient operation of the Ministry of Justice.

67. In the midst of this situation, there were complaints of the corruption to which detainees and their relatives were exposed, having to pay illegally for any service which brought any kind of benefit whatever to individual detainees in the prison establishments, and even for transfer to the courts. It may be pointed out in this respect that under article 73 of the Code of Criminal Procedure, defendants may apply through the director of the prison or establishment where they are detained to be transferred to the court for their case to be examined in the company of a lawyer, or failing that, a person of trust. The Director of Prisons, on the other hand, suggested that for some procedures the judges should themselves visit the prisons, which would avoid many transfers of detainees, but that they did not do so out of lack of interest.

68. Generally speaking, not even the least criteria are used to classify the prison population. In most places of detention, there is no separation between convicted and unconvicted persons, nor any selection according to the seriousness of the offences committed or the dangerous nature of the individuals concerned, the inmates being distributed within a prison in accordance with their liking. There is, moreover, a high level of violence between inmates, due to a large extent to a general state of idleness 24/ and to the large quantity of weapons held by detainees, partly supplied by the officials themselves through corrupt practices. In this respect, according to the Attorney-General's report, the latter dealt with 130 cases of homicide and 799 cases of assault in prisons in 1995. 25/ In addition, ill-treatment is not infrequently inflicted by officials on detainees for reasons of discipline.

69. As a result of all the above factors, outbreaks of violence are liable to occur, as one did on 3 January 1994, when over 100 detainees were killed and dozens wounded at the National Prison of Maracaibo; on that occasion, one group of prisoners locked up another in one of the wings, setting fire to the

building and shooting or stabbing anyone trying to escape from the flames. According to reports, the events were witnessed by National Guard and prison officers, who failed to react, until the attackers had withdrawn and the flames had caused irretrievable damage. The case is being investigated by a military court.

70. More recently, on 22 October 1996, incidents occurred at the El Paraíso Re-education and Handicraft Centre (La Planta) in Caracas, which resulted in the death of about 25 detainees (burnt alive) and an indefinite number of other casualties. According to reports, one of the detainees had an exchange of words with one of the National Guard officials. The latter ordered the inmates of the prison wing concerned to be locked up in their overcrowded cells, after which they threw in tear-gas grenades, setting off a large fire. Apparently in previous months many complaints had been lodged by inmates regarding the ill-treatment they suffered at the hands of the National Guard.

71. According to information provided by the Government, in order to deal with the crisis in the prison system, the Government has adopted the following measures: 14 new directors, 32 officials and 300 guards have been appointed; top security prisons have been placed under military control as a means of avoiding mutinies and mass escapes and of carrying out inspections to disarm inmates; agreements have been concluded with several bodies to develop work and educational programmes in the prisons. The Ministry of Justice is also aiming to build new prisons and to renovate existing establishments.

72. The Minister of Justice said that although for 20 years the prison system, like other sectors of social policy, had been in a state of total abandonment, they had become an issue to which his Ministry attached the greatest importance. Responsibility for the dereliction of the sector was to be attributed not only to the Ministry of Justice, but also to the Congress, which had not budgeted sufficient funds to meet requirements. The Council of Ministers itself had shown little interest in the problem. Measures were currently being studied to reduce overpopulation, such as releasing more detainees on probation, by simplifying the procedure involved (a programme which was beginning to be applied), in view of the fact that under the current system the police and the judges tended to act according to excessively repressive criteria and were too prone to order detention. In this respect, the Attorney-General pointed out that under the current system individuals were detained for investigation and to gather evidence. With the reform of the Code of Criminal Procedure, the situation would be reversed, that is to say, detention would be ordered as a last resort, only after evidence had been obtained, and the delays for detention orders to be passed by judges would be shortened.

73. The Minister of Justice also referred to the lack of training and low wages among prison guards, which explained the high rates of corruption. In only three months, over 100 officials had been dismissed for corruption, including some directors. The Director of Prisons said that the Ministry was preparing a proposal to institute a real prison police, which would replace existing guards and the National Guard on prison duties and for the transfers of detainees. This police force would be better trained and better paid. Training would be provided by a penitentiary institute which the Ministry of Justice would like to set up as soon as possible. A fund had also been

started for the purchase of new vehicles for transfers of detainees. Both were confident that the introduction of the accusatorial system would speed up proceedings.

IV. CONCLUSIONS AND RECOMMENDATIONS

74. The visit of the Special Rapporteur was characterized by accessibility, flexibility and openness. He was able to meet with all the official interlocutors with whom he sought meetings. Some of these were arranged while he was already in the country, thanks to the helpful efficiency of the Human Rights Unit of the Ministry of Foreign Relations and the spirit of cooperation evinced by senior officials of the executive, legislative and judicial arms of Government. Most of those with whom he spoke addressed the problems they faced in preventing violations of human rights within the mandate of the Special Rapporteur with disarming candour. Those with direct responsibility for the behaviour of the security forces and police bodies tended, in varying degrees, to be more cautious about the extent of possible abuses and to affirm more faith in the disciplinary and judicial institutions established to prevent and repress abuses.

75. On the basis of information he received, both before and during the visit, from non-governmental organizations, lawyers, persons claiming to be victims of torture or similar ill-treatment and their families, and the operational and political leadership of the three branches of Government (poder público), he has been able to develop a general sense of the problem and its scope. In his opinion, torture and similar ill-treatment are perpetrated on persons in the hands of all the law enforcement bodies (Army, National Guard, DISIP, PTJ, state police forces, Caracas Metropolitan Police and some municipal police forces) with powers of arrest, detention or interrogation. Such ill-treatment is neither routine nor automatic, on the one hand, nor an isolated, occasional aberration, on the other. Rather, it is an available technique resorted to at will if there is felt to be an imperative need to secure a confession or information relevant to the task of repressing crime, whether it be common or politically motivated crime. Sometimes it may be used for the purpose of "settling scores", eliciting bribes, or "teaching a lesson" on behalf of those adversely affected by the victim's "suspected criminal activities" (landholders, shopowners, etc.). Torture may also be inflicted against persons under administrative detention in application of the Law of Vagrants and Crooks (ley de Vagos y Maleantes), a law that the Special Rapporteur hopes will soon be abolished.

76. Torture and ill-treatment are facilitated by the rules regarding detention by law enforcement bodies which permit the PTJ to hold detainees, once handed over by the detaining body (immediately according to the law, after up to 72 hours in practice), for up to eight days. Detainees may also be at risk for the further four or even eight days during which they may be held pending a decision by the examining tribunal (tribunal instructor) on continuing the detention. The constitutional and legal prohibition against incommunicado detention seems in practice often not complied with. Access is sometimes denied by the detaining body, not only to family members and lawyers, but even to representatives of the Attorney-General's Office (fiscales). Such denial may even be based on a refusal to acknowledge actual detention.

77. The legal system in practice continues to place heavy reliance on confessions, probably because of the lack of competence and resources of the investigating bodies to develop other incriminating evidence. Meanwhile, the law, as interpreted by the courts (art. 182 of the Penal Code), only protects inmates of prisons from torture and other cruel, inhuman or degrading treatment as understood in international law. The law relating to the infliction of slight or serious injuries (lesiones leves o graves) is inadequate.

78. Misgivings expressed by both non-governmental and governmental interlocutors regarding the role of the PTJ as the investigating body for complaints of torture, especially where PTJ officials are the alleged perpetrators, seemed plausible. So did concerns regarding the inappropriateness of the Instituto de Medicina Legal being a part of the PTJ.

79. The nudo hecho procedure, designed to protect public officials from false and malicious accusations of wrongdoing, was commonly and credibly perceived as being a shield to protect them from real accountability. The effectiveness of the 10-day processing rule instituted by the Attorney-General had not, at the time of the mission, resulted in overcoming this problem.

80. Access to the courts for a remedy was seriously hampered by the lack of free legal advice to persons without the means to pay for legal advice.

81. Conditions in the three institutions of deprivation of liberty he visited were incompatible with the international prohibition of cruel, inhuman or degrading treatment or punishment and were effectively recognized as such by those responsible for administering them. They ranged from the anarchic (Sabaneta), through the grossly overcrowded (La Planta), to the exiguously restrictive (Coche). The overwhelming majority of inmates were unconvicted persons, supposedly benefiting from the presumption of innocence. Indeed, in Sabaneta and La Planta there was no separation of convicted and unconvicted persons, nor between those held in respect of graver or lesser crimes.

82. Most of the problems described above, including those relating to prison conditions, were blamed on the inadequacy of the resources made available to the relevant bodies. The police were undertrained and underpaid and generally held in low esteem. Overworked judges, handling traditional, cumbersome procedures, found it easier to order detention than releases; the prison system or, in the case of minors, the INAM (Instituto Nacional del Menor) had to accept far more inmates than it was capable of absorbing or to leave them, specially in the case of minors, in the hands of the police. Just about every possible shortage afflicted the prison system: insufficient space, insufficient and inadequately paid and trained guards, insufficient and inadequate food, medical facilities and recreational, educational and work facilities. They could not even transfer prisoners to scheduled court hearings. Since no institution could do its job according to law and agreed practice, all had to make do. The result is arbitrariness and attendant corruption and oppressiveness.

83. There is no suggestion that these problems reflect the will of the country's political leadership. Indeed, many of the proposed reforms described earlier suggest a desire for improvement. Nevertheless, to the

extent that resources are a key element of the problems, the political will needs to be mustered to accord real budgetary priority to reform. The Special Rapporteur is aware that there prevails a climate of general insecurity and fear of crime that has led to a pronounced lack of sympathy for those deprived of liberty and a corresponding, albeit counter-productive, demand for repression. This climate - amounting to a virtual social psychosis - is aggravated by the stringent economic pressures felt by ordinary people as a result of macroeconomic structural readjustment measures. These same measures also make it harder for the Government to divert resources from other purposes to the reform of the criminal justice system. One practical piece of evidence of the existence of some political will to avoid impunity for the most outrageous excesses is the assurances given to the Special Rapporteur that the criminal proceedings against those charged with the events in Cararabo will be pursued to their full extent. Nevertheless, this would appear to be a rare exception to the generally prevailing rule of impunity.

84. The Special Rapporteur would like to underline the general sense of openness to the international community which virtually all his interlocutors evidenced. This openness was reflected not only in the reception and welcome accorded to the delegation, but also in a desire for moral support for needed reforms, new ideas, and technical and financial assistance in planning and executing reforms. He noted with appreciation a World Bank project, coordinated by the local UNDP office, to enhance the judicial infrastructure, as well as European Community projects to improve educational and training facilities in prisons. The cooperation with competent local non-governmental organizations in such matters also appeared highly positive. The Special Rapporteur also took note of the establishment, by Decree of 24 January 1996 (published in the Official Gazette on 13 September 1996) of an advisory organ to the Executive on human rights issues called the National Commission on Human Rights. This will be composed of representatives of different ministries, as well as the Office of the Attorney-General (Procuraduría General de la República), the Government of the Metropolitan District (Gobernación del Distrito Federal) and the National Council of Frontiers (Consejo Nacional de Fronteras).

85. In the light of the foregoing conclusions, the Government of Venezuela is respectfully urged to give serious consideration to the following recommendations:

(a) The period of time in which detained persons are to be brought before a judge should be reduced from eight to no more than four days;

(b) Effective access of all persons deprived of liberty to independent legal advice should be vouchsafed within 24 hours of initial detention. Such access should be exercised in accordance with principle 18 of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173 of 9 December 1988), which sets forth the following:

> "2. A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.

"3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.

"4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.";

(c) Contacts of all persons deprived of liberty with their families should also be vouchsafed, in accordance with the following standards of the same Body of Principles:

16. "1. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody".

19. "A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.";

(d) Measures should be taken in order to safeguard the right of all detainees to a proper medical examination. Principles 24 to 26 of the Body of Principles set forth, in this regard, the following:

"A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment (... .)"

"A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or other authority for a second medical examination or opinion."

"The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefore shall be in accordance with relevant rules of domestic law.";

(e) Judicial complaints against police officials should always be investigated by a body independent of the police body whose officials are the subject of the complaint;

(f) Senior law enforcement officials should make it clearly known that the ill-treatment of detained persons is not acceptable and will be dealt with severely;

(g) The Legal Medical Institute (Instituto de Medicina Legal) should be autonomous of any authority responsible for the investigation or prosecution of crime;

(h) A system of regular visits to all places of detention (police custody, pre-trial detention and post-conviction imprisonment) should be put in place. Its composition should include independent persons of standing and representatives of responsible non-governmental organizations;

(i) Extrajudicial confessions should not be admissible as evidence against the person making them or anyone else, other than a person charged with extorting them;

(j) A code of practice for the conduct of interrogations by law enforcement officials should be drawn up;

(k) Torture and similar behaviour, as contemplated by article 182 of the Penal Code, should be made a criminal offence when inflicted on any person deprived of liberty, not just on those in prisons. The offence should be punished as a grave crime and should have no period of statutory limitation or, in any event, a period not shorter than that applicable to the gravest crimes under the Penal Code. Provisions regarding the offence of torture should bring domestic law into line with the standards set forth in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(l) The absence of marks consistent with allegations of torture should not necessarily be treated by the prosecutors and judges as proof that such allegations are false;

(m) Nudo hecho proceedings should not be allowed to delay the institution of criminal proceedings against public officials for more than a matter of weeks. In any event, they should be excluded from the period for calculation of any applicable statutory limitation;

(n) The false denial to a prosecutor of a person's detention or the refusal of that representative's access to a detainee should be vigorously pursued as an act requiring instant dismissal of those responsible for the place of detention;

(o) The prosecutors should be rotated so as to avoid becoming overly identified with law enforcement or military personnel in a particular locality or place of detention;

(p) The judiciary should monitor closely and systematically that conditions of detention or imprisonment are consistent with the prohibition of cruel, inhuman or degrading treatment or punishment and with the right to be treated with humanity and respect for human dignity enshrined in the international human rights instruments;

(q) Measures aimed at reducing the number of pre-trial detainees should be adopted urgently;

(r) Convicted prisoners should be separated from unconvicted prisoners;

(s) First-time offenders or suspected offenders should be kept separate from recidivists; those held in connection with the commission of serious offences, particularly of a violent nature, should be kept separate from other detainees or prisoners;

(t) Children deprived of liberty (as a last resort), even if only for a few days or weeks, should be held exclusively in institutions aimed at protecting them and adapted, from all points of view, to their particular needs. They should be provided with medical, psychological and educational assistance;

(u) Control of prisons should never be abandoned to its inmates. A trained corps of personnel needs to be available to ensure that prisons are run consistently with the United Nations Standard Minimum Rules for the Treatment of Prisoners. With regard to personnel, rule 46, in particular, states the following:

> "1. The prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends.
>
> "2. The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used."

In this respect, paragraph 11 of resolution 1996/33 A entitled "Torture and other cruel, inhuman or degrading treatment or punishment" of the United Nations Commission on Human Rights emphasizes the obligation of States parties under article 10 of the Convention against Torture to ensure education and training for personnel who may be involved in the custody, interrogation or treatment of any individual subjected to any form or arrest, detention or imprisonment, and calls upon the High Commissioner for Human Rights to provide, at the request of Governments, advisory services in this regard, as well as technical assistance in the development, production and distribution of appropriate teaching material for this purpose. Disorders in the prisons

should be dealt with consistently with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, in particular Principles 15 to 17;

(v) Plans for the reform of the system of criminal procedure and the judiciary should be pursued and implemented promptly, especially on those aspects aimed at addressing the problem of delays in the administration of justice. At the same time, the Government and the legislative bodies should consider increasing the budget allocated to the judiciary;

(w) Serious attention should be given to proposals for the establishment of a national institution for the promotion and protection of human rights. Discussions on this issue could take into consideration the Principles relating to the status of national institutions, transmitted by the Commission on Human Rights in its resolution 1992/54 of 3 March 1992 to the United Nations General Assembly, which annexed the Principles to its resolution 48/134 of 20 December 1993.

86. The international community, including the United Nations and other multilateral institutions, as well as individual sympathetic Governments, are urged to collaborate with the Government of Venezuela and responsible local NGOs in helping realize these recommendations.

Notes

1/ The criminal investigations police reports to the Ministry of Justice and is the auxiliary body of the courts responsible for investigating offences.

2/ The DISIP reports to the Ministry of the Interior and performs the functions of political police.

3/ The State police forces are under the authority of the Governors of the respective States and basically perform crime prevention work. The police force that covers the metropolitan area is known as the Metropolitan Police.

4/ Also called the Armed Forces of Cooperation, these perform various public order activities, including external surveillance of prison compounds and, in exceptional circumstances, also internal surveillance. Attached to the Ministry of Defence.

5/ See para. 44 below concerning the confusion between the concepts of torture and injury.

6/ El Banco Mundial y la Reforma Judicial en Venezuela, Provea, June 1996, pp. 42-43.

7/ Data taken from Red de Apoyo's monthly publication "Derechos Humanos en Cifras".

8/ A summary of these cases appears in document E/CN.4/1997/7/Add.1.

9/ Decree No. 943 of 22 November 1995.

10/ Adopted by the General Assembly in resolution 34/169 of 17 December 1979.

11/ The instrument of ratification of this Convention was deposited with the United Nations on 29 July 1991. At the close of this report, Venezuela had still not submitted its initial report to the Committee against Torture established by the Convention, despite the fact that it should have done so in 1992. See Report of the Committee against Torture, Official Records of the General Assembly, Fiftieth Session, Supplement No. 44 (A/50/44).

12/ "Official letter to a prosecutor concerning steps to be taken to request and conduct an información de nudo hecho procedure", Informe del Fiscal General de la República al Congreso de la República (Report by the Attorney-General to the Congress of the Republic), 1995, vol. II, pp. 304-305.

13/ Ibid., p. 316.

14/ Informe del Fiscal General de la República al Congreso de la República, 1994, vol. II, p. 33.

15/ A summary of these replies is given in the Special Rapporteur's report (E/CN.4/1997/7/Add.1).

16/ Nineteen persons detained in Guasdualito; see above, para. 29.

17/ According to article 224, once pre-trial proceedings have been completed, the Military Investigating Judge orders the case to be referred to the President of the Republic for the latter to decide whether to proceed with the case or not. Under the terms of article 226, if the President of the Republic decides to suspend the case, the file is returned to the Investigating Judge, who must comply with the decision and order the case to be filed.

18/ Julio César Fernández Toro: "La seguridad jurídica in Venezuela" ("Legal Security in Venezuela") in El Desarrollo Humano en Venezuela (Human Development in Venezuela), UNDP, 1994, pp. 191-192.

19/ The Judicature Council is in charge of administering the system of courts placed under the Supreme Court of Justice. Its powers cover the appointment, training, assessment and disciplining of magistrates, as well as budgetary matters.

20/ Report by the Attorney-General, 1995, op. cit., vol. II, pp. 317-318.

21/ Under the terms of this law, against which there are currently several actions of unconstitutionality as well as a reform project, the administrative authority of a State can order the detention, even for several years, of individuals merely on the grounds of being considered dangerous.

22/ Report by the Attorney-General, 1995, op. cit., p. 283.

23/ El Banco Mundial y la Reforma Judicial en Venezuela, op. cit., p. 40.

24/ According to official information, only some 15 per cent of prison inmates work, for four or five hours per day, five days a week.

25/ Report by the Attorney-General, 1995, op. cit., p. 321.